

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

JORGE W. CORTÉS-MORALES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 07-1107 (JAF)

(Crim. No. 05-424)

OPINION AND ORDER

Petitioner Jorge W. Cortés-Morales requests a certificate of appealability from this court to appeal our denial of his 28 U.S.C. § 2255 petition. Docket Document No. 14; see 28 U.S.C. § 2253(c)(2) (2006). A certificate of appealability may be granted only upon a substantial showing of the denial of a constitutional right. §§ 2253(c)(2), (3). To make this showing, the applicant “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (quoting Williams v. Taylor, 529 U.S. 420, 484 (2000)).

Plaintiff argues that his conviction is barred by the Double Jeopardy Clause because Puerto Rico is not a separate sovereign from the United States. Docket Document No. 14. It is the well-established law of the First Circuit that Puerto Rico is to be treated as a separate sovereign from the United States for double jeopardy purposes. United States v. López Andino, 831 F.2d 1164, 1167-68 (1st Cir. 1987). However, the Eleventh Circuit disagrees, holding that Puerto Rico is constitutionally a territory, and not a separate

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1 sovereign. United States v. Sánchez, 992 F.2d 1143, 1151-52 (11th
2 Cir. 1993). Because reasonable jurists could debate the status of
3 Puerto Rico with respect to the Double Jeopardy Clause, we are
4 required to grant Petitioner's request for a certificate of
5 appealability. See Lozada v. Deeds, 498 U.S. 430, 432 (1991)
6 (concluding that a court must grant a certificate of probable cause
7 where there is a circuit split as to the merits of the underlying
8 constitutional claim).

9 Plaintiff also argues that his guilty plea was not knowing,
10 intelligent and voluntary. We ruled that the plea was knowing,
11 intelligent, and voluntary because, at the change-of-plea hearing,
12 Petitioner assured the court that he was competent to plead, that he
13 understood the consequences of his plea, and that he was not
14 pressured by his attorney. Docket Document No. 10. Upon reviewing
15 the record, we find that any reasonable jurist would agree with our
16 March 27, 2008 Opinion and Order. Id.

17 Accordingly, we **GRANT** Petitioner's request for a certificate of
18 appealability.

19 **IT IS SO ORDERED.**

20 San Juan, Puerto Rico, this 17th day of June, 2008.

21 S/José Antonio Fusté
22 JOSE ANTONIO FUSTE
23 Chief U.S. District Judge